

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA

v.

PHILIP LAMB ET AL.

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5:19-cr-25-RWS

**MEMORANDUM ORDER ADOPTING
REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

The above-entitled and numbered criminal action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. On August 10, 2020, the Magistrate Judge issued a Report and Recommendation, recommending Defendants Philip Lamb, Vincent Marchetti, Jr., William Flowers, James J. Walker, Jr., Timothy Armstrong, Virginia Blake Herrin, Chismere Mallard, and Ray W. Ng.’s Motion to Continue Trial Date (Docket No. 202-1) be granted, as modified.

Defendant Chismere Mallard filed a “joint objection/response” to the Report and Recommendation. Docket No. 220. Defendant Steven Donofrio filed a response to the joint objection. Docket No. 221. The Court conducted a *de novo* review of the Magistrate Judge’s findings and conclusions.

REPORT AND RECOMMENDATION

On July 10, 2020, Defendants Philip Lamb, Vincent Marchetti, Jr., William Flowers, James J. Walker, Jr., Timothy Armstrong, Virginia Blake Herrin, Chismere Mallard, and Ray W. Ng (collectively “Movant Defendants”) filed a Motion to Continue Trial Date and to Schedule Status Conference, requesting the September 28, 2020 trial setting be moved to a date on or after August 1, 2021, so that they may adequately prepare for trial and to avoid the danger posed by the COVID-

19 pandemic to all trial participants, court staff, and the general public. Docket No. 202 at p. 2. Defendant Donofrio filed a response in opposition to the requested continuance, asserting he is entitled to a speedy trial under §§ 3161 and 3162 of the Speedy Trial Act and the Sixth Amendment of the United States Constitution. Docket No. 204. Donofrio argued neither the COVID-19 pandemic nor the alleged complexity of this matter overrides his right to a speedy trial. *Id.* at pp. 7-10.

Movant Defendants filed a reply to Donofrio's response, asserting they have diligently prepared their defenses but need more time. Docket No. 205 at p. 1. Movant Defendants pointed out Donofrio did not oppose Defendant Walker's prior request for a continuance, which was for a trial date on or after March 22, 2021. *Id.* at pp. 4-5.

The Government did not oppose Movant Defendants' motion. At the request of the Court, the Government filed a reply to Donofrio's response. Docket No. 206. The Government asserted the world has "changed in dramatic ways since February" when Walker filed his motion, pointing out there were no COVID-19 cases in the entire State of Texas at that time. *Id.* at p. 2. The Government further maintained the Court's previous ruling suspended Speedy Trial Act deadlines. *Id.* at p. 3. The Government argued the Court should continue the trial in this case to no earlier than March 22, 2021, the earliest date on which all the defendants had previously agreed. *Id.* at pp. 3-4.

The Magistrate Judge scheduled a video conference August 6, 2020 and heard argument on the motion. On August 10, 2020, the Magistrate Judge entered a Report and Recommendation, recommending Movant Defendants' motion for continuance be granted, but as modified. Rather than recommend the trial setting be continued until a date no sooner than August 2021 as requested by Movant Defendants, the Magistrate Judge recommended the Court continue the pretrial deadlines and the September 28, 2020 jury selection date and enter new dates and deadlines in accordance with

the Court's March 2021 criminal docket. Docket No. 211 at pp. 10-11. The Magistrate Judge concluded that under the circumstances, "the ends of justice will be served by granting a continuance until Judge Schroeder's March 2021 criminal docket, the date originally requested by Walker and agreed to by Donofrio." *Id.* at p. 10.

DEFENDANT'S JOINT OBJECTION

Defendant Mallard filed a joint objection to the Magistrate Judge's Report and Recommendation. Although Movant Defendants "take no issue with the factual and legal conclusions" of the Magistrate Judge, they request the Court set the trial date no sooner than August 2021. Docket No. 220 at p. 2. According to Defendant Mallard, a jury trial in or near March 2021 presents an irreconcilable conflict for counsel for Defendant Mallard. Specifically, Defendant Mallard's counsel is scheduled for an April 5, 2021 jury trial in a criminal matter pending in the Northern District of Texas. According to Defendant Mallard, a jury trial in or near March 2021 also presents conflicts for counsel for Defendants Walker, Besen, and Nokes, who also have trials in early April and May 2021. *Id.*

In Defendant Donofrio's response to the joint objection, Donofrio asserts "both the Magistrate Judge's compromise trial date of March 2021 and the other Defendants' 'amended'/renewed requested trial date of August 2021 implicate Mr. Donofrio's constitutional and statutory rights to a speedy trial." Docket No. 221 at p. 2. Defendant Donofrio urges the Court to either reset the September 2020 trial date or at least set his trial at the soonest possible date to eliminate any further delay. *Id.*

DE NOVO REVIEW

The Court, having reviewed the Report and Recommendation, the parties' briefing, the joint

objection, and Defendant Donofrio's response, agrees with the Magistrate Judge that under the circumstances, the ends of justice will be served by granting a continuance of the September 2020 trial date. The decision whether to grant a continuance is within the sound discretion of the trial court. *United States v. Hayes*, 267 F. Supp. 3d 827, 832 (W.D. Tex. 2016) (citing *United States v. Rounds*, 749 F.3d 326, 336 (5th Cir. 2014)). "The judgment range [for such a decision] is exceedingly wide." *Id.* (quoting *Streber v. Hunter*, 221 F.3d 701, 736 (5th Cir. 2000)).

"Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling witnesses, lawyers, and jurors at the same place, at the same time, and this burden counsels against continuances except for compelling reasons." *Id.* (quoting *Morris v. Slappy*, 461 U.S. 1, 11, 103 S.Ct. 1610, 75 L.Ed.2d 610 (1983)). Given that Defendants were originally indicted in December 2019, given that the Court granted Defendant Walker's request that the case be designated as complex, given that the Court previously granted a continuance of the trial date to the September 2020 trial setting, and given that the Magistrate Judge has recommended the Court continue the trial setting to a date that all Defendants and counsel for the Government were agreeable to in February 2020, the Court also agrees with the Magistrate Judge's recommendation that the case be continued at this time only to the Court's March 2021 criminal trial docket rather than to August 2021.

Counsel for Defendants Mallard, Walker, Besen, and Nokes have informed the Court of their current April 2021 and tentative May 2021 trial settings in other cases. If those trial settings remain a conflict as this case progresses, the Court would entertain another motion for continuance. However, at this time, the April and May trial settings do not warrant pushing out the trial setting in this case until August 2021.

The undersigned is of the opinion that the findings and conclusions of the Magistrate Judge are correct and hereby adopts same as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that Defendants Philip Lamb, Vincent Marchetti, Jr., William Flowers, James J. Walker, Jr., Timothy Armstrong, Virginia Blake Herrin, Chismere Mallard, and Ray W. Ng.'s Motion to Continue Trial Date (Docket No 202-1) is **GRANTED, as modified**. It is further

ORDERED the pretrial deadlines and the September 28, 2020 jury selection trial date are continued to the following new dates and deadlines:

DEADLINES:

Pretrial Motions Deadline: February 2, 2021 (except Motions for Continuance)

Responses to Pretrial Motions Deadline: February 9, 2021

Deadline to file Motion for Continuance or notice Court of plea agreement:
February 16, 2021 by 3:00 p.m.

COURT SETTINGS:

Pretrial Conference:
March 2, 2021 at 10:00 a.m.

Jury Selection and Trial:
March 22, 2021

SIGNED this 4th day of September, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE